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**NAACP LEGAL DEFENSE &
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

GEORGE MANDALA and CHARLES
BARNETT, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

NTT DATA, INC.,

Defendant.

Case No. 18 Civ. 6591 (CJS)

**PLAINTIFFS' RESPONSE TO NTT DATA INC.'S
NOTICE OF SUPPLEMENTAL AUTHORITY AS TO *EVANS***

Plaintiffs respectfully submit this response to NTT Data Inc.'s ("NTT's") Notice of Supplemental Authority, *see* ECF No. 16, as to *Evans v. City of Philadelphia* ("*Evans II*"), --- F. App'x ---, No. 18-1947, 2019 WL 581555 (3d Cir. Feb. 13, 2019).

Evans is a narrow opinion that does not provide guidance to the Court on the plausibility of Plaintiffs' allegation that NTT's policy, which screens out applicants with criminal records, has a disparate impact on African Americans, who are statistically more likely to have a criminal record than the general population. *See* ECF No. 1 (Compl.) ¶¶ 52-54. Here, as with the other cases already cited in its moving and reply briefs, NTT argues for an unsupportable rule that Plaintiffs must prove impact (rather than plausibility) before discovery even commences. It does

so by patching together select sentences from the *Evans II* opinion devoid of the crucial procedural context.

In fact, the *Evans II* decision supports the argument that it would be premature to rule on the adequacy of Plaintiffs' claims at this stage in the litigation. In *Evans II*, the Third Circuit affirmed a district court's finding that the plaintiff's attempt to add a disparate impact claim for the first time "nearly four months after the close of discovery and nearly a month after [the defendant] moved for summary judgment" constituted undue delay. *Evans II*, 2019 WL 581555, at *1 (citing *Evans v. City of Philadelphia* ("*Evans I*"), No. 16 Civ. 1897, 2018 WL 1525346, at *7-8 (E.D. Pa. Feb. 28, 2018)).¹ Additionally, the evidence in the record—after the completion of all discovery—established that there was no statistical racial impact flowing from the policy at issue, rendering amendment futile. *Evans II*, 2019 WL 581555, at *2. Thus, *Evans* provides no support to NTT at this procedural stage where discovery has not even commenced.

Dated: March 14, 2019
New York, New York

Respectfully submitted,

By: /s/ Ossai Miazad
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¹ The district court also applied a heightened "substantial merit" standard that required the plaintiff to provide "substantial and convincing evidence" due to the completion of discovery and the defendant's filing of a summary judgment motion. *Evans I*, 2018 WL 1525346, at *8 ("[W]hen a party moves to amend the complaint after a motion for summary judgment is filed, courts in this Court have 'imposed stringent standards before granting such motions.'" (citations omitted)).

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